

REMARKS/ARGUMENTS

This Response is submitted in response to the Office Action mailed on October 20, 2003.

The request for continued examination of this application has been granted. The Office Action rejects Claims 1-7, 9-15, 17, 18, and 21-26 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,753,805 ("*Cherukuri*"). In addition, Claims 8, 16, 19, and 20 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Cherukuri* in view of U.S. Patent No. 5,318,784 ("*Ream*"). Finally, Claims 1-26 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Ream* in view of *Cherukuri* or U.S. Patent No. 6,322,828 ("*Athanikar*"). In response, Claims 1, 12, and 15 have been amended to more clearly describe the present invention. Applicants respectfully submit that all of the above-mentioned rejections have been overcome or are improper for reasons set forth below.

The present invention, as now claimed, provides a tableted gum composition and methods of producing same. The tableted gum composition includes a gum component including one or more gum chips and a tableting media. The tableting media has an average particle size that is smaller in size than the average particle size of the gum chips, and the tableted gum has a non-homogeneous distribution of the gum component and the tableting media.

The method for forming the chewing gum composition includes the steps of providing a gum component; processing the gum component to form one or more gum chips; mixing the gum chips with a tableting media wherein the tableting media has an average particle size that is smaller in size than the average particle size of the gum chips; and processing the mixture of gum chips and tableting media to form a non-homogeneous distribution of the gum component and the tableting media in the tableted gum.

Support for the amendments may be found on page 4, lines 29-31 of the Application, thus no new matter has been added. Applicants respectfully submit that each of the cited references fails to teach or arguably suggest a number of the features of the claimed invention.

The Office Action rejects claims 1-7, 9-15, 17, 18 and 21-26 under 35 U.S.C. § 103(a) as being unpatentable over *Cherukuri*. The Office Action states that a non-homogenous distribution of gum particles and tableting media is obviously present in the gum of both

Cherukuri and the present invention since the gum particles therein are of the same size as Applicants' gum particles and since the powdered sweetener as used in *Cherukuri* inherently includes particles smaller than the gum particles used therein. *See* Paper No. 7, paragraph 3. Applicant respectfully submits this is incorrect as *Cherukuri* fails to teach or suggest a tableting media having an average particle size that is smaller than the average particle size of the gum chips of a gum component, and teaches away from a tableted gum having a non-homogeneous distribution of the gum component and the tableting media.

Cherukuri is silent as to a component of the composition of the chewing gum considered to be a tableting media having an average particle size smaller than the average particle size of gum chips. The compression aids and flavorings which are combined with the gum granules to form the final tableting formulation as disclosed by *Cherukuri* cannot be assumed to be smaller than the gum granules without some teaching or suggestion. *See* Column 8, lines 34-55. The compression aids include lubricants, glidants and anti-adherents. As disclosed in *Cherukuri*, the lubricants include metallic stearates, hydrogenated vegetable oils, partially hydrogenated vegetable oils, animal fats, polyethylene glycols, polyoxethylene monostearate and mixtures thereof. Glidants include alkali metal salts, talc, starch, polyhydric alcohols and mixtures thereof. Anti-adherents include silicates, silicone dioxide, talc and mixtures thereof. Applicants respectfully submit that, even if this combination of ingredients can be considered a tableting media, it is neither obvious nor inherent that the size of the tableting media particles are smaller than the gum granules.

Further, in justifying the range of particle size of the chewing gum granulation, *Cherukuri* discusses the disadvantages of using particles less than 4 mesh (6.0 mm) or "fines" contrary to the preferred particle sizes disclosed in Claims 13 and 26 providing for gum chips to be 0.5 mm to 6.0 mm. In fact, the purpose of introducing the grinding aid, as acknowledged in *Cherukuri*, is to address problems associated with particle sizes of greater than 6 mm when feeding into the tableting press. *See* Column 2, lines 33-36 and Column 4, lines 19-21. Therefore, *Cherukuri* fails to teach or suggest providing a tableting media which includes an average particle size smaller than the average particle size of the gum chips. Clearly, *Cherukuri* teaches away from claims 13 and 26.

Regardless, *Cherukuri* also fails to teach or suggest a tableted gum having a non-homogeneous distribution of the gum component and the tableting media. Even if *Cherukuri* can be interpreted to suggest a tableting media that is smaller in size to the gum granules, *Cherukuri* teaches away from non-homogenous mixtures of particle sizes. *Cherukuri* states that the chewing gum granulation cannot have a particle size of less than 4 mesh to avoid segregation during tableting due to the wide distribution of particle size when fines are used. See Column 4, lines 12-19. In contrast to Applicants' claimed invention, *Cherukuri* wants an homogenous distribution. Therefore, *Cherukuri* fails to teach or suggest, and, indeed, teaches away from, a tableted gum having a non-homogeneous distribution of the gum component and the tableting media.

Accordingly, Applicants respectfully submit that the rejection of Claims 1-7, 9-15, 17, 18, and 21 to 26 under 35 U.S.C. §103(a) should be withdrawn.

Claims 1-26 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Ream* in view of *Cherukuri* or *Athanikar*. *Ream* does not teach or suggest forming a gum tablet and, in fact, teaches away from the present invention. Applicants, therefore, respectfully submit that this rejection is not proper.

In stating that it would have been obvious to compress the gum composition of *Ream* into a tablet, the Office Action acknowledges that *Ream* does not disclose a tableted gum. *Cherukuri* or *Athanikar* are combined with *Ream* to remedy this deficiency. Even if *Ream* can be combined with *Cherukuri* or *Athanikar*, one of skill in the art would not be motivated by such combination to provide a tableted gum having a non-homogeneous distribution of the gum component and the tableting media. As discussed in detail above, *Cherukuri* does not disclose or suggest a tableted chewing gum that includes a non-homogeneous distribution of the gum component and the tableting media in the final tableted product. Similarly, neither *Ream* nor *Athanikar* disclose a non-homogeneous distribution of the gum component and the tableting media. Instead, *Ream* teaches combining chewing gum particles with a sweet confection in various ways "to insure complete intermixing of the chewing gum particles with the sweet confection" and so that the chewing gum particles are "thoroughly mixed" with the sweet confection. See Column 6, lines 29-45. Furthermore, as pointed out in Applicants' previous responses, *Anthanikar* teaches

mixing an active ingredient with the powdered gum composition into “a uniform and accurate mixture.” See Column 4, lines 9-14.

Furthermore, a non-homogenous distribution of gum granules and a tableting media is not inherent in the gum compositions of *Ream*, *Cherukuri* or *Athanikar*. As pointed out by the Federal Circuit in *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999), “To establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.” (emphasis added) The “missing descriptive matter” of a non-homogenous distribution of the gum chips and tableting media, is not “necessarily present” in the gum composition of these references. The clear teaching of these references to create evenly distributed mixtures of particles further substantiates this lack of necessity. Moreover, the court adds that inherency may not be established by probabilities or possibilities. Therefore, the mere fact that a non-homogenous distribution of the gum chips and tableting media may result from a given set of circumstances is also insufficient to establish inherency.

Accordingly, Applicants respectfully request that this obviousness rejection with respect to claims 1-26 be withdrawn.

Claims 8, 16, 19, and 20 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Cherukuri* as applied to Claims 1 to 7, 9 to 15, 17, 18, and 21 to 26, and further in view of *Ream*. *Cherukuri* does not teach or suggest the present invention. Moreover, *Ream* does not remedy the deficiencies of *Cherukuri*. *Ream* does not disclose tableting a chewing gum composition, and teaches away from the present invention as discussed above. Accordingly, Applicants respectfully submit that this rejection of the claims has been overcome and request withdrawal of the same. In addition, because Claim 8 and Claims 16, 19 and 20 depend from amended Claims 1 and 15, respectively, which Applicants respectfully submit are in condition for allowance, Claims 8, 16, 19 and 20 are also in condition for allowance.

Applicants respectfully request that the Patent Office give full consideration to the remarks contained herein. In the Advisory Action mailed July 17, 2003, the Patent Office acknowledged that the proposed amendments raised new issues by reciting “a non-homogeneous

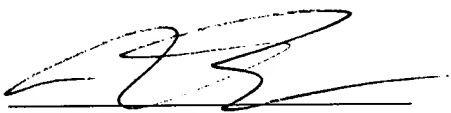
distribution of the gum component and the tableting media.” In the present Office Action, however, the Patent Office merely repeated the previous rejections and apparently gives no weight to the amendments set forth in the previous response.

For the foregoing reasons, Applicants respectfully request reconsideration of their patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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